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4 **UNITED STATES DISTRICT COURT**
5 **NORTHERN DISTRICT OF CALIFORNIA**

6 ASETEK DANMARK A/S) CASE NO. 3:16-CV-07068-JST
7)
8 Plaintiff,) **MODEL STIPULATION & ~~PROPOSED~~**
9 vs.) **ORDER RE: DISCOVERY OF**
10 NEWEGG INC., NEWEGG NORTH) **ELECTRONICALLY STORED**
11 AMERICA INC.,) **INFORMATION FOR PATENT**
12 Defendants.) **LITIGATION**

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14 Upon the stipulation of the parties, the Court ORDERS as follows:

15 1. This Order supplements all other discovery rules and orders. It streamlines Electronically
16 Stored Information (“ESI”) production to promote a “just, speedy, and inexpensive determination of
17 this action, as required by Federal Rule of Civil Procedure 1.”

18 2. This Order may be modified in the Court’s discretion or by stipulation. The parties shall
19 jointly submit any proposed modifications within 30 days after the Federal Rule of Civil Procedure
20 16 Conference.

21 3. As in all cases, costs may be shifted for disproportionate ESI production requests pursuant
22 to Federal Rule of Civil Procedure 26. Likewise, a party’s nonresponsive or dilatory discovery
23 tactics are cost-shifting considerations.

24 4. A party’s meaningful compliance with this Order and efforts to promote efficiency and
25 reduce costs will be considered in cost-shifting determinations.

26 5. The parties are expected to comply with the District’s E-Discovery Guidelines
27 (“Guidelines”) and are encouraged to employ the District’s Model Stipulated Order Re: the
28 Discovery of Electronically Stored Information and Checklist for Rule 26(f) Meet and Confer

1 regarding Electronically Stored Information.

2 6. General ESI production requests under Federal Rules of Civil Procedure 34 and 45 shall
3 not include email or other forms of electronic correspondence (collectively “email”). To obtain email
4 parties must propound specific email production requests.

5 7. Email production requests shall only be propounded for specific issues, rather than general
6 discovery of a product or business.

7 8. Email production requests shall be phased to occur after the parties have exchanged initial
8 disclosures and basic documentation about the patents, the prior art, the accused instrumentalities,
9 and the relevant finances. While this provision does not require the production of such information,
10 the Court encourages prompt and early production of this information to promote efficient and
11 economical streamlining of the case.

12 9. Email production requests shall identify the custodian, search terms, and time frame. The
13 parties shall cooperate to identify the proper custodians, proper search terms and proper timeframe
14 as set forth in the Guidelines.

15 10. Each requesting party shall limit its email production requests to a total of five custodians
16 per producing party for all such requests. The parties may jointly agree to modify this limit without
17 the Court’s leave. The Court shall consider contested requests for additional custodians, upon
18 showing a distinct need based on the size, complexity, and issues of this specific case. Cost-shifting
19 may be considered as part of any such request.

20 11. Each requesting party shall limit its email production requests to a total of five search
21 terms per custodian per party. The parties may jointly agree to modify this limit without the Court’s
22 leave. The Court shall consider contested requests for additional search terms per custodian, upon
23 showing a distinct need based on the size, complexity, and issues of this specific case. The Court
24 encourages the parties to confer on a process to test the efficacy of the search terms. The search
25 terms shall be narrowly tailored to particular issues. Indiscriminate terms, such as the producing
26 company’s name or its product name, are inappropriate unless combined with narrowing search
27 criteria that sufficiently reduce the risk of overproduction. A conjunctive combination of multiple
28 words or phrases (*e.g.*, “computer” and “system”) narrows the search and shall count as a single

1 search term. A disjunctive combination of multiple words or phrases (e.g., “computer” or “system”)
2 broadens the search, and thus each word or phrase shall count as a separate search term unless they
3 are variants of the same word. Use of narrowing search criteria (e.g., “and,” “but not,” “w/x”) is
4 encouraged to limit the production and shall be considered when determining whether to shift costs
5 for disproportionate discovery. Should a party serve email production requests with search terms
6 beyond the limits agreed to by the parties or granted by the Court pursuant to this paragraph, this
7 shall be considered in determining whether any party shall bear all reasonable costs caused by such
8 additional discovery.

9 12. Nothing in this Order prevents the parties from agreeing to use technology assisted
10 review and other techniques insofar as their use improves the efficacy of discovery. Such topics
11 should be discussed pursuant to the District’s E-Discovery Guidelines.

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13 **IT IS SO STIPULATED**, through Counsel of Record.

14
15 Dated: April 25, 2017

/s/ Jacob A. Schroeder

16 Jacob A. Schroeder (SBN 264717)
17 FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER LLP

18 Attorney for Plaintiff ASETTEK DANMARK A/S

19 Dated: April 25, 2017

/s/ Gordon M. Fauth, Jr.

20 Gordon M. Fauth, Jr. (SBN 190280)
LITIGATION LAW GROUP

21 Attorney for Defendants NEWEGG INC. and
22 NEWEGG NORTH AMERICA INC.

23
24 **IT IS ORDERED** that the forgoing Agreement is approved.

25
26 Dated: April 25, 2017



27 UNITED STATES DISTRICT JUDGE
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